

Timbisha Shoshone Tribe

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PROPOSED RULE **PR 71+73**

The Secretary

U. S. Nuclear Regulatory Commission (64FR 71331)
Washington, D.C. 20555-0001

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RE: Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste (10 CFR Parts 71 and 73)

Dear Secretary:

The following comments on the proposed rulemaking, [10 CFR Parts 71 and 73] *Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste* are submitted by the Timbisha Shoshone Tribe, a federally recognized Indian tribe entitled to privileges and immunities by virtue of its status as a Tribe with a government-to-government relationship with the United States government.

The Timbisha Shoshone Tribe is a member of the Consolidated Group of Tribes and Organizations (CGTO), an entity which has worked with the DOE concerning the Yucca Mountain Project. The Timbisha Shoshone Tribe fully supports the letter sent to your office by Richard Arnold, CGTO spokesperson, on the proposed rulemaking, (10 CFR Parts 71 and 73), dated February 25, 2000. Because of the importance of this issue, the Timbisha Shoshone Tribe is sending you its own letter with a few additional points. Questions are referenced to the Federal Register Notice (Vol. 64, No. 244, December 21, 1999), and Richard Arnold's letter for the CGTO.

(A.2.) [question 2] *How can the NRC ensure that contact information is kept current, particularly for smaller Tribes?* and (C.1.) [question 6] *How can licensees effectively and comprehensively identify the location of Native American Tribes along a particular vehicle, rail, or vessel shipment route?*

We would like to emphasize Richard Arnold's response to (A.2.): "The NRC should make a concerted effort to initiate consultation directly with each tribe that is *on or near* proposed shipping corridors." [emphasis added]. Advance notification for spent fuel shipments which are "transported to or across tribal boundaries" is too restrictive.

The NRC should take the most pro-active position possible concerning government-to-government consultation with Tribal governments. The DOE fell short in its consultation obligations for the DEIS for Yucca Mountain and the Supplemental Notice of Proposed Rulemaking concerning the Yucca Mountain Site Suitability Guidelines, 10 CFR Parts 960 and 963.

TEMPLATE = SECY-067

SECY-02

(D.5.) [question 14] *A recipient of Safeguards Information must expend resources to ensure the information is handled properly. Are there Tribes who may not wish to be recipients of Safeguards Information?* and (D.7.) [question 16] *10 CFR 73.21(a) states that "information protection procedures employed by State and local police forces are deemed to meet the information protection requirements of Section 73.21(b) through (i)." Should the NRC determine the ability of tribal governments to protect Safeguards Information and, if so, how?*

These questions address the need for adequate funding to affected Tribal governments. Even though the Timbisha Shoshone Tribe and other Indian tribes would be impacted by the Yucca Mountain Project, no tribe was afforded "affected status" designation by the DOE, as provided for in Section 116 (a) of the Nuclear Waste Policy A (NWPA) of 1982, as amended. Unlike the State of Nevada or counties in the region, the Timbisha Shoshone Tribe was never given any funds to fully address the complex environmental and cultural issues associated with radioactive waste shipments transported within its ~~Homeland~~. As Richard Arnold concluded in the CGTO letter, "I implore you to examine the possibility of providing the necessary funding and technical support to Tribal Governments so that they can better respond to the intent of the Advance Notice of Proposed Rulemaking."

Thank you for responding to the issue of tribal sovereignty and the need for Tribes to be informed about nuclear waste shipments on or near tribal lands.

Sincerely,



Bill Helmer
Tribal Historic Preservation Officer
Timbisha Shoshone Tribe

for Pauline Esteves
Tribal Chairperson
Timbisha Shoshone Tribe